

**19-6-401. Short title.**

This part is known as the "Underground Storage Tank Act."

**19-6-402. Definitions.**

As used in this part:

- (1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate a release from an underground storage tank or petroleum storage tank, or to limit or reduce, mitigate, or eliminate the damage caused by that release.
- (2) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.
- (3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by any person.
- (4) "Certificate of compliance" means a certificate issued to a facility by the executive secretary:
  - (a) demonstrating that an owner or operator of a facility containing one or more petroleum storage tanks has met the requirements of this part; and
  - (b) listing all tanks at the facility, specifying which tanks may receive petroleum and which tanks have not met the requirements for compliance.
- (5) "Certificate of registration" means a certificate issued to a facility by the executive secretary demonstrating that an owner or operator of a facility containing one or more underground storage tanks has:
  - (a) registered the tanks; and
  - (b) paid the annual underground storage tank fee.
- (6) (a) "Certified underground storage tank consultant" means any person who:
  - (i) meets the education and experience standards established by the board under Subsection 19-6-403(1)(a)(vi) in order to provide or contract to provide information, opinions, or advice relating to underground storage tank management, release abatement, investigation, corrective action, or evaluation for a fee, or in connection with the services for which a fee is charged; and
  - (ii) has submitted an application to the board and received a written statement of certification from the board.
- (b) "Certified underground storage tank consultant" does not include:
  - (i) an employee of the owner or operator of the underground storage tank, or an employee of a business operation that has a business relationship with the owner or operator of the underground storage tank, and that markets petroleum products or manages underground storage tanks; or
  - (ii) persons licensed to practice law in this state who offer only legal advice on underground storage tank management, release abatement, investigation, corrective action, or evaluation.
- (7) "Closed" means an underground storage tank no longer in use that has been:
  - (a) emptied and cleaned to remove all liquids and accumulated sludges; and
  - (b) either removed from the ground or filled with an inert solid material.
- (8) "Corrective action plan" means a plan for correcting a release from a petroleum storage tank that includes provisions for all or any of the following:
  - (a) cleanup or removal of the release;
  - (b) containment or isolation of the release;
  - (c) treatment of the release;
  - (d) correction of the cause of the release;
  - (e) monitoring and maintenance of the site of the release;
  - (f) provision of alternative water supplies to persons whose drinking water has become contaminated by the release; or
  - (g) temporary or permanent relocation, whichever is determined by the executive secretary to be more cost-effective, of persons whose dwellings have been determined by the executive secretary to be no longer habitable due to the release.
- (9) "Costs" means any monies expended for:
  - (a) investigation;
  - (b) abatement action;

- (c) corrective action;
- (d) judgments, awards, and settlements for bodily injury or property damage to third parties;
- (e) legal and claims adjusting costs incurred by the state in connection with judgments, awards, or settlements for bodily injury or property damage to third parties; or
- (f) costs incurred by the state risk manager in determining the actuarial soundness of the fund.
- (10) "Covered by the fund" means the requirements of Section 19-6-424 have been met.
- (11) "Dwelling" means a building that is usually occupied by a person lodging there at night.
- (12) "Enforcement proceedings" means a civil action or the procedures to enforce orders established by Section 19-6-425.
- (13) "Executive secretary" means the executive secretary of the board.
- (14) "Facility" means all underground storage tanks located on a single parcel of property or on any property adjacent or contiguous to that parcel.
- (15) "Fund" means the Petroleum Storage Tank Trust Fund created in Section 19-6-409.
- (16) "Loan fund" means the Petroleum Storage Tank Loan Fund created in Section 19-6-405.3.
- (17) "Operator" means any person in control of or who is responsible on a daily basis for the maintenance of an underground storage tank that is in use for the storage, use, or dispensing of a regulated substance.
- (18) "Owner" means:
  - (a) in the case of an underground storage tank in use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use, or dispensing of a regulated substance; and
  - (b) in the case of any underground storage tank in use before November 8, 1984, but not in use on or after November 8, 1984, any person who owned the tank immediately before the discontinuance of its use for the storage, use, or dispensing of a regulated substance.
- (19) "Petroleum" includes crude oil or any fraction of crude oil that is liquid at 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute.
- (20) "Petroleum storage tank" means a tank that:
  - (a) (i) is underground;
  - (ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6991c, et seq.; and
  - (iii) contains petroleum; or
  - (b) is a tank that the owner or operator voluntarily submits for participation in the Petroleum Storage Tank Trust Fund under Section 19-6-415.
- (21) "Petroleum Storage Tank Restricted Account" means the account created in Section 19-6-405.5.
- (22) "Program" means the Environmental Assurance Program under Section 19-6-410.5.
- (23) "Property damage" means physical injury to or destruction of tangible property including loss of use of that property.
- (24) "Regulated substance" means petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
- (25) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or petroleum storage tank. The entire release is considered a single release.
- (26) (a) "Responsible party" means any person who:
  - (i) is the owner or operator of a facility;
  - (ii) owns or has legal or equitable title in a facility or an underground storage tank;
  - (iii) owned or had legal or equitable title in the facility at the time any petroleum was received or contained at the facility;
  - (iv) operated or otherwise controlled activities at the facility at the time any petroleum was received or contained at the facility; or
  - (v) is an underground storage tank installation company.
- (b) "Responsible party" as defined in Subsections (26)(a)(i), (ii), and (iii) does not include:
  - (i) any person who is not an operator and, without participating in the management of a facility and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership:
    - (A) primarily to protect his security interest in the facility; or
    - (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit

plan; or

(ii) governmental ownership or control of property by involuntary transfers as provided in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).

(c) The exemption created by Subsection (b)(i)(B) does not apply to actions taken by the state or its officials or agencies under this part.

(d) The terms and activities "indicia of ownership," "primarily to protect a security interest," "participation in management," and "security interest" under this part are in accordance with 40 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).

(e) The terms "participate in management" and "indicia of ownership" as defined in 40 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to the fiduciaries listed in Subsection (26)(b)(i)(B).

(27) "Soil test" means a test, established or approved by board rule, to detect the presence of petroleum in soil.

(28) "State cleanup appropriation" means the money appropriated by the Legislature to the department to fund the investigation, abatement, and corrective action regarding releases not covered by the fund.

(29) "Underground storage tank" means any tank regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

(a) a petroleum storage tank;

(b) underground pipes and lines connected to a storage tank; and

(c) any underground ancillary equipment and containment system.

(30) "Underground storage tank installation company" means any person, firm, partnership, corporation, governmental entity, association, or other organization who installs underground storage tanks.

(31) "Underground storage tank installation company permit" means a permit issued to an underground storage tank installation company by the executive secretary.

(32) "Underground storage tank technician" means a person employed by and acting under the direct supervision of a certified underground storage tank consultant to assist in carrying out the functions described in Subsection (6)(a).

#### **19-6-402.5. Retroactive effect.**

(1) The Legislature finds the definitions in this part prior to the passage of this act did not clearly set forth procedures for identifying responsible parties and interfered with effective allocation of costs of cleanup as required by this part.

(2) It is the intent of the Legislature that this act provides clarification regarding procedures for allocating responsibility for the costs of investigation, abatement, and corrective action as required under this part.

(3) It is the intent of the Legislature that this part imposes liability as determined under this part retroactively to any release of petroleum or any other regulated substance subject to investigation, abatement, or corrective action under this part.

#### **19-6-403. Powers and duties of board.**

The board shall regulate an underground storage tank or petroleum storage tank by:

(1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, making rules that:

(a) provide for the:

(i) certification of an installer, inspector, tester, or remover;

(ii) registration of a tank;

(iii) administration of the petroleum storage tank program;

(iv) format of and required information in a record kept by a tank owner or operator who is participating in the fund;

(v) voluntary participation in the fund for:

(A) an above ground petroleum storage tank; and

(B) a tank;

(I) exempt from regulation under 40 C.F.R., Part 280, Subpart (B); and

- (II) specified in Section 19-6-415; and
- (vi) certification of an underground storage tank consultant including:
  - (A) a minimum education or experience requirement; and
  - (B) a recognition of the educational requirement of a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act, as meeting the education requirement for certification;
- (b) adopt the requirements for an underground storage tank contained in:
  - (i) the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991, et seq., as may be amended in the future; and
  - (ii) an applicable federal requirement authorized by the federal law referenced in Subsection (1)(b)(i); and
- (c) comply with the requirements of the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991c, et seq., as may be amended in the future, for the state's assumption of primacy in the regulation of an underground storage tank; and
- (2) applying the provisions of this part.

**19-6-404. Powers and duties of executive secretary.**

- (1) The executive secretary shall administer the petroleum storage tank program established in this part.
- (2) As necessary to meet the requirements or carry out the purposes of this part, the executive secretary may:
  - (a) advise, consult, and cooperate with other persons;
  - (b) employ persons;
  - (c) authorize a certified employee or a certified representative of the department to conduct facility inspections and reviews of records required to be kept by this part and by rules made under this part;
  - (d) encourage, participate in, or conduct studies, investigation, research, and demonstrations;
  - (e) collect and disseminate information;
  - (f) enforce rules made by the board and any requirement in this part by issuing notices and orders;
  - (g) review plans, specifications, or other data;
  - (h) represent the state in all matters pertaining to interstate underground storage tank management and control, including, with the concurrence of the executive director, entering into interstate compacts and other similar agreements;
    - (i) enter into contracts or agreements with political subdivisions for the performance of any of the department's responsibilities under this part if:
      - (i) the contract or agreement is not prohibited by state or federal law and will not result in a loss of federal funding; and
      - (ii) the executive secretary determines that:
        - (A) the political subdivision is willing and able to satisfactorily discharge its responsibilities under the contract or agreement; and
        - (B) the contract or agreement will be practical and effective;
    - (j) take any necessary enforcement action authorized under this part;
    - (k) require an owner or operator of an underground storage tank to:
      - (i) furnish information or records relating to the tank, its equipment, and contents;
      - (ii) monitor, inspect, test, or sample the tank, its contents, and any surrounding soils, air, or water; or
      - (iii) provide access to the tank at reasonable times;
    - (l) take any abatement, investigative, or corrective action as authorized in this part; and
    - (m) enter into agreements or issue orders to apportion percentages of liability of responsible parties under Section 19-6-424.5.
- (3) Except as otherwise provided in Subsection 19-6-414(3), appeals of decisions made by the executive secretary under this part shall be made to the board.

**19-6-405.3. Creation of Petroleum Storage Tank Loan Fund -- Purposes -- Loan eligibility -- Loan restrictions -- Rulemaking.**

- (1) There is created the revolving loan fund entitled the Petroleum Storage Tank Loan Fund.
- (2) The sources of monies for the loan fund are:
  - (a) appropriations to the loan fund;
  - (b) principal and interest received from the repayment of loans made by the executive secretary under Subsection (3); and
  - (c) all investment income derived from money in the fund.
- (3) The executive secretary may loan, in accordance with this section, monies available in the loan fund to persons to be used for:
  - (a) upgrading petroleum storage tanks and associated piping with corrosion protection, or spill and overflow prevention equipment as necessary to meet the federal deadline required under 40 CFR 280.21;
  - (b) replacing underground storage tanks; or
  - (c) permanently closing underground storage tanks.
- (4) A person may apply to the executive secretary for a loan under Subsection (3) if all tanks owned or operated by that person are in substantial compliance with all state and federal requirements or will be brought into substantial compliance using money from the loan fund.
- (5) The executive secretary shall consider loan applications under Subsection (4) to meet the following objectives:
  - (a) support availability of gasoline in rural parts of the state;
  - (b) support small businesses; and
  - (c) reduce the threat of a petroleum release endangering the environment.
- (6) Loans made under this section shall:
  - (a) be for no more than \$45,000 for all tanks at any one facility;
  - (b) be for no more than \$15,000 per tank;
  - (c) be for no more than 80% of the total cost of:
    - (i) upgrading a tank and associated piping to meet requirements of 40 CFR 280.21;
    - (ii) replacing the underground storage tank; or
    - (iii) permanently closing the underground storage tank;
  - (d) have a fixed annual interest rate of 3%;
  - (e) have a term no longer than ten years;
  - (f) be made on the condition the loan applicant obtains adequate security for the loan as established by board rule under Subsection (7); and
  - (g) comply with rules made by the board under Subsection (7).
- (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing:
  - (a) form, content, and procedure for loan applications;
  - (b) criteria and procedures for prioritizing loan applications;
  - (c) requirements and procedures for securing loans;
  - (d) procedures for making the loans;
  - (e) procedures for administering and ensuring repayment of loans, including late payment penalties; and
  - (f) procedures for recovering on defaulted loans.
- (8) The decisions of the executive secretary in loaning money from the loan fund and otherwise administering the loan fund are not subject to Title 63G, Chapter 4, Administrative Procedures Act.
- (9) The Legislature shall appropriate monies for administration of the loan fund to the department from the loan fund.
- (10) The executive secretary may enter into agreements with public entities or private organizations to perform any tasks associated with administration of the loan fund.

**19-6-405.5. Creation of restricted account.**

- (1) There is created in the General Fund a restricted account known as the Petroleum Storage Tank Restricted Account.
- (2) All penalties and interest imposed under this part shall be deposited in this account, except as provided in

Section 19-6-410.5. Specified program funds under this part that are unexpended at the end of the fiscal year lapse into this account.

(3) The Legislature shall appropriate the money in the account to the department for the costs of administering the petroleum storage tank program under this part.

**19-6-405.7. Petroleum Storage Tank Cleanup Fund -- Revenue and purposes.**

(1) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank Cleanup Fund," which is referred to in this section as the cleanup fund.

(2) The cleanup fund sources of revenue are:

- (a) any voluntary contributions received by the department for the cleanup of facilities;
- (b) legislative appropriations made to the cleanup fund; and
- (c) costs recovered under this part.

(3) The cleanup fund shall earn interest, which shall be deposited in the cleanup fund.

(4) The executive secretary may use the cleanup fund monies for administration, investigation, abatement action, and preparing and implementing a corrective action plan regarding releases not covered by the Petroleum Storage Tank Trust Fund created in Section 19-6-409.

**19-6-407. Underground storage tank registration -- Change of ownership or operation -- Civil penalty.**

(1) (a) Each owner or operator of an underground storage tank shall register the tank with the executive secretary if the tank:

- (i) is in use; or
- (ii) was closed after January 1, 1974.

(b) If a new person assumes ownership or operational responsibilities for an underground storage tank, that person shall inform the executive secretary of the change within 30 days after the change occurs.

(c) Each installer of an underground storage tank shall notify the executive secretary of the completed installation within 60 days following the installation of an underground storage tank.

(2) The executive secretary may issue a notice of agency action assessing a civil penalty in the amount of \$1,000 if an owner, operator, or installer, of a petroleum or underground storage tank fails to register the tank or provide notice as required in Subsection (1).

(3) The penalties collected under authority of this section shall be deposited in the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

**19-6-408. Underground storage tank registration fee -- Processing fee for tanks not in the program.**

(1) The department may assess an annual underground storage tank registration fee against owners or operators of underground storage tanks that have not been closed. These fees shall be:

- (a) billed per facility;
- (b) due on July 1 annually;
- (c) deposited with the department as dedicated credits;
- (d) used by the department for the administration of the underground storage tank program outlined in this part; and
- (e) established under Section 63J-1-303.

(2) (a) In addition to the fee under Subsection (1), an owner or operator who elects to demonstrate financial assurance through a mechanism other than the Environmental Assurance Program shall pay a processing fee of:

- (i) for fiscal year 1997-98, \$1,000 for each financial assurance mechanism document submitted to the division for review; and
  - (ii) on and after July 1, 1998, a processing fee established under Section 63J-1-303.
- (b) If a combination of financial assurance mechanisms is used to demonstrate financial assurance, the fee

under Subsection (2)(a) shall be paid for each document submitted.

(c) As used in this Subsection (2), "financial assurance mechanism document" may be a single document that covers more than one facility through a single financial assurance mechanism.

(3) Any funds provided for administration of the underground storage tank program under this section that are not expended at the end of the fiscal year lapse into the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

(4) The executive secretary shall provide all owners or operators who pay the annual underground storage tank registration fee a certificate of registration.

(5) (a) The executive secretary may issue a notice of agency action assessing a civil penalty of \$1,000 per facility if an owner or operator of an underground storage tank facility fails to pay the required fee within 60 days after the July 1 due date.

(b) The registration fee and late payment penalty accrue interest at 12% per annum.

(c) If the registration fee, late payment penalty, and interest accrued under this Subsection (5) are not paid in full within 60 days after the July 1 due date any certificate of compliance issued prior to the July 1 due date lapses. The executive secretary may not reissue the certificate of compliance until full payment under this Subsection (5) is made to the department.

(d) The executive secretary may waive any penalty assessed under this Subsection (5) if no fuel has been dispensed from the tank on or after July 1, 1991.

#### **19-6-409. Petroleum Storage Tank Trust Fund created -- Source of revenues.**

(1) (a) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank Trust Fund."

(b) The sole sources of revenues for the fund are:

(i) petroleum storage tank fees under Section 19-6-411;

(ii) underground storage tank installation company permit fees under Section 19-6-411;

(iii) the environmental assurance fee and any penalties, paid under Section 19-6-410.5; and

(iv) any interest accrued on these revenues.

(c) Interest earned on fund monies shall be deposited into the fund.

(2) Fund monies may be used to pay:

(a) costs as provided in Section 19-6-419; and

(b) for the administration of the fund and the environmental assurance program and fee under Section 19-6-410.5.

(3) Costs for the administration of the fund and the environmental assurance fee shall be appropriated by the Legislature.

(4) The executive secretary may expend monies from the fund for:

(a) legal and claims adjusting costs incurred by the state in connection with claims, judgments, awards, or settlements for bodily injury or property damage to third parties;

(b) costs incurred by the state risk manager in determining the actuarial soundness of the fund; and

(c) other costs as provided in this part.

#### **19-6-410.5. Environmental assurance program -- Participant fee.**

(1) As used in this section:

(a) "Cash balance" means cash plus investments and current accounts receivable minus current accounts payable, excluding the liabilities estimated by the state risk manager.

(b) "Commission" means the State Tax Commission, as defined in Section 59-1-101.

(2) (a) There is created an Environmental Assurance Program.

(b) The program shall provide to participating owners and operators, upon payment of the fee imposed under Subsection (4), assistance with satisfying the financial responsibility requirements of 40 CFR, Part 280, Subpart H, by providing funds from the Petroleum Storage Tank Trust Fund established in Section 19-6-409, subject to the terms and conditions of Chapter 6, Part 4, Underground Storage Tank Act, and rules implemented under that part.

(3) (a) Subject to Subsection (3)(b), participation in the program is voluntary.

(b) Each owner and operator seeking to satisfy financial responsibility requirements through the program shall use the program for all petroleum underground storage tanks that the owner or operator owns or operates.

(4) (a) There is assessed an environmental assurance fee of 1/2 cent per gallon on the first sale or use of petroleum products in the state.

(b) The environmental assurance fee and any other revenue collected under this section shall be deposited in the Petroleum Storage Tank Trust Fund created in Section 19-6-409 and used solely for the purposes listed in Section 19-6-409.

(5) (a) The commission shall collect the environmental assurance fee and any penalties and interest imposed under this section.

(b) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules to establish:

(i) the method of payment of the environmental assurance fee;

(ii) the procedure for reimbursement or exemption of owners or operators who do not participate in the program, including owners and operators of above ground storage tanks; and

(iii) the procedure for confirming with the department those owners and operators who qualify for reimbursement or exemption under Subsection (5)(b)(ii).

(c) The commission may retain an amount not to exceed 2.5% of fees collected under this section for the cost to it of rendering its services.

(6) (a) The person or entity responsible for payment of the fee under this section shall, by the last day of the month following the month in which the sale occurs:

(i) complete and submit the form prescribed by the commission; and

(ii) pay the fee to the commission.

(b) (i) The penalties and interest for failure to file the form or to pay the environmental assurance fee are the same as the penalties and interest under Sections 59-1-401 and 59-1-402.

(ii) The commission shall deposit penalties and interest collected under this section in the Petroleum Storage Tank Trust Fund.

(c) The commission shall report to the department any person or entity who is delinquent in payment of the fee under this section.

(7) (a) (i) If the cash balance of the Petroleum Storage Tank Trust Fund on June 30 of any year exceeds \$20,000,000, the assessment of the environmental assurance fee as provided in Subsection (4) is reduced to 1/4 cent per gallon beginning November 1.

(ii) The reduction shall remain in effect until modified by the Legislature in a general or special session.

(b) The commission shall determine the cash balance of the fund each year as of June 30.

(c) Before September 1 of each year, the department shall provide the commission with the accounts payable of the fund as of June 30.

#### **19-6-411. Petroleum storage tank fee for program participants.**

(1) In addition to the underground storage tank registration fee paid in Section 19-6-408, the owner or operator of a petroleum storage tank who elects to participate in the environmental assurance program under Section 19-6-410.5 shall also pay an annual petroleum storage tank fee to the department for each facility as follows:

(a) on and after July 1, 1990, through June 30, 1993, an annual fee of:

(i) \$250 for each tank:

(A) located at a facility engaged in petroleum production, refining, or marketing; or

(B) with an annual monthly throughput of more than 10,000 gallons; and

(ii) \$125 for each tank:

(A) not located at a facility engaged in petroleum production, refining, or marketing; and

(B) with an annual monthly throughput of 10,000 gallons or less;

(b) on and after July 1, 1993, through June 30, 1994, an annual fee of:

(i) \$150 for each tank:

(A) located at a facility engaged in petroleum production, refining, or marketing; or



- (B) with an average monthly throughput of more than 10,000 gallons; and
- (ii) \$75 for each tank:
- (A) not located at a facility engaged in petroleum production, refining, or marketing; and
- (B) with an average monthly throughput of 10,000 gallons or less; and
- (c) on and after July 1, 1994, an annual fee of:
  - (i) \$50 for each tank in a facility with an annual facility throughput rate of 400,000 gallons or less;
  - (ii) \$150 for each tank in a facility with an annual facility throughput rate of more than 400,000 gallons; and
  - (iii) \$150 for each tank in a facility regarding which:
    - (A) the facility's throughput rate is not reported to the department within 30 days after the date this throughput information is requested by the department; or
    - (B) the owner or operator elects to pay the fee under this subsection, rather than report under Subsection (1)(c)(i) or (ii); and
  - (d) on and after July 1, 1998, for any new tank:
    - (i) which is installed to replace an existing tank at an existing facility, any annual petroleum storage tank fee paid for the current fiscal year for the existing tank is applicable to the new tank; and
    - (ii) installed at a new facility or at an existing facility, which is not a replacement for another existing tank, the fees are as provided in Subsection (1)(c) of this section.
- (2) (a) As a condition of receiving a permit and being eligible for benefits under Section 19-6-419 from the Petroleum Storage Tank Trust Fund, each underground storage tank installation company shall pay to the department the following fees to be deposited in the fund:
  - (i) an annual fee of:
    - (A) \$2,000 per underground storage tank installation company if the installation company has installed 15 or fewer underground storage tanks within the 12 months preceding the fee due date; or
    - (B) \$4,000 per underground storage tank installation company if the installation company has installed 16 or more underground storage tanks within the 12 months preceding the fee due date; and
  - (ii) \$200 for each underground storage tank installed in the state, to be paid prior to completion of installation.
  - (b) The board shall make rules specifying which portions of an underground storage tank installation shall be subject to the permitting fees when less than a full underground storage tank system is installed.
- (3) (a) Fees under Subsection (1) are due on or before July 1 annually.
- (b) If the department does not receive the fee on or before July 1, the department shall impose a late penalty of \$60 per facility.
- (c) (i) The fee and the late penalty accrue interest at 12% per annum.
- (ii) If the fee, the late penalty, and all accrued interest are not received by the department within 60 days after July 1, the eligibility of the owner or operator to receive payments for claims against the fund lapses on the 61st day after July 1.
- (iii) In order for the owner or operator to reinstate eligibility to receive payments for claims against the fund, the owner or operator shall meet the requirements of Subsection 19-6-428(3).
- (4) (a) (i) Fees under Subsection (2)(a)(i) are due on or before July 1 annually. If the department does not receive the fees on or before July 1, the department shall impose a late penalty of \$60 per installation company. The fee and the late penalty accrue interest at 12% per annum.
- (ii) If the fee, late penalty, and all accrued interest due are not received by the department within 60 days after July 1, the underground storage tank installation company's permit and eligibility to receive payments for claims against the fund lapse on the 61st day after July 1.
- (b) (i) Fees under Subsection (2)(a)(ii) are due prior to completion of installation. If the department does not receive the fees prior to completion of installation, the department shall impose a late penalty of \$60 per facility. The fee and the late penalty accrue interest at 12% per annum.
- (ii) If the fee, late penalty, and all accrued interest are not received by the department within 60 days after the underground storage tank installation is completed, eligibility to receive payments for claims against the fund for that tank lapse on the 61st day after the tank installation is completed.
- (c) The executive secretary may not reissue the underground storage tank installation company permit until the fee, late penalty, and all accrued interest are received by the department.
- (5) If the state risk manager determines the fees established in Subsections (1) and (2) and the environmental assurance fee established in Section 19-6-410.5 are insufficient to maintain the fund on an actuarially sound basis, he

shall petition the Legislature to increase the petroleum storage tank and underground storage tank installation company permit fees, and the environmental assurance fee to a level that will sustain the fund on an actuarially sound basis.

(6) The executive secretary may waive all or part of the fees required to be paid on or before May 5, 1997, for a petroleum storage tank under this section if no fuel has been dispensed from the tank on or after July 1, 1991.

(7) (a) Each petroleum storage tank or underground storage tank, for which payment of fees has been made and other requirements have been met to qualify for a certificate of compliance under this part, shall be issued a form of identification, as determined by the board under Subsection (7)(b).

(b) The board shall make rules providing for the identification, through a tag or other readily identifiable method, of petroleum storage tanks or underground storage tanks under Subsection (7)(a) that qualify for a certificate of compliance under this part.

#### **19-6-412. Petroleum storage tank -- Certificate of compliance.**

(1) (a) Beginning July 1, 1990, an owner or operator of a petroleum storage tank may obtain a certificate of compliance for the facility.

(b) Effective July 1, 1991, each owner or operator of a petroleum storage tank shall have a certificate of compliance for the facility.

(2) The executive secretary shall issue a certificate of compliance if:

(a) the owner or operator has a certificate of registration;

(b) the owner or operator demonstrates it is participating in the Environmental Assurance Program under Section 19-6-410.5, or otherwise demonstrates compliance with financial assurance requirements as defined by rule;

(c) all state and federal statutes, rules, and regulations have been substantially complied with; and

(d) all tank test requirements of Section 19-6-413 have been met.

(3) If the ownership of or responsibility for the petroleum storage tank changes, the certificate of compliance is still valid unless it has been revoked or has lapsed.

(4) The executive secretary may issue a certificate of compliance for a period of less than one year to maintain an administrative schedule of certification.

(5) The executive secretary shall reissue a certificate of compliance if the owner or operator of an underground storage tank has complied with the requirements of Subsection (2).

(6) If the owner or operator electing to participate in the program has a number of tanks in an area where the executive secretary finds it would be difficult to accurately determine which of the tanks may be the source of a release, the owner may only elect to place all of the tanks in the area in the program, but not just some of the tanks in the area.

#### **19-6-413. Tank tightness test -- Actions required after testing.**

(1) The owner or operator of any petroleum storage tank registered prior to July 1, 1991, must submit to the executive secretary the results of a tank tightness test conducted:

(a) on or after September 1, 1989, and prior to January 1, 1990, if the test meets requirements set by rule regarding tank tightness tests that were applicable during that period; or

(b) on or after January 1, 1990, and prior to July 1, 1991.

(2) The owner or operator of any petroleum storage tank registered on or after July 1, 1991, must submit to the executive secretary the results of a tank tightness test conducted within the six months before the tank was registered or within 60 days after the date the tank was registered.

(3) If the tank test performed under Subsection (1) or (2) shows no release of petroleum, the owner or operator of the petroleum storage tank shall submit a letter to the executive secretary at the same time the owner or operator submits the test results, stating that under customary business inventory practices standards, the owner or operator is not aware of any release of petroleum from the tank.

(4) (a) If the tank test shows a release of petroleum from the petroleum storage tank, the owner or operator of the tank shall:

(i) correct the problem; and

- (ii) submit evidence of the correction to the executive secretary.
- (b) When the executive secretary receives evidence from an owner or operator of a petroleum storage tank that the problem with the tank has been corrected, the executive secretary shall:
  - (i) approve or disapprove the correction; and
  - (ii) notify the owner or operator that the correction has been approved or disapproved.
- (5) The executive secretary shall review the results of the tank tightness test to determine compliance with this part and any rules adopted under the authority of Section 19-6-403.
- (6) If the owner or operator of the tank is required by 40 C.F.R., Part 280, Subpart D, to perform release detection on the tank, the owner or operator shall submit the results of the tank tests in compliance with 40 C.F.R., Part 280, Subpart D.

**19-6-414. Grounds for revocation of certificate of compliance and ineligibility for payment of costs from fund.**

- (1) If the executive secretary determines that any of the requirements of Subsection 19-6-412(2) and Section 19-6-413 have not been met, the executive secretary shall notify the owner or operator by certified mail that:
  - (a) his certificate of compliance may be revoked;
  - (b) if he is participating in the program, he is violating the eligibility requirements for the fund; and
  - (c) he shall demonstrate his compliance with this part within 60 days after receipt of the notification or his certificate of compliance will be revoked and if participating in the program he will be ineligible to receive payment for claims against the fund.
- (2) If the executive secretary determines the owner's or operator's compliance problems have not been resolved within 60 days after receipt of the notification in Subsection (1), the executive secretary shall send written notice to the owner or operator that the owner's or operator's certificate of compliance is revoked and he is no longer eligible for payment of costs from the fund.
- (3) Revocation of certificates of compliance may be appealed to the executive director.

**19-6-415. Participation of exempt and above ground tanks.**

- (1) An underground storage tank exempt from regulation under 40 C.F.R., Part 280, Subpart A, may become eligible for payments from the Petroleum Storage Tank Trust Fund if it:
  - (a) (i) is a farm or residential tank with a capacity of 1,100 gallons or less and is used for storing motor fuel for noncommercial purposes;
  - (ii) is used for storing heating oil for consumptive use on the premises where stored; or
  - (iii) is used for any oxygenate blending component for motor fuels;
  - (b) complies with the requirements of Section 19-6-412;
  - (c) meets other requirements established by rules made under Section 19-6-403; and
  - (d) pays registration and tank fees and environmental assurance fees, equivalent to those fees outlined in Sections 19-6-408, 19-6-410.5, and 19-6-411.
- (2) An above ground petroleum storage tank may become eligible for payments from the Petroleum Storage Tank Trust Fund if the owner or operator:
  - (a) pays those fees that are equivalent to the registration and tank fees and environmental assurance fees under Sections 19-6-408, 19-6-410.5, and 19-6-411;
  - (b) complies with the requirements of Section 19-6-412; and
  - (c) meets other requirements established by rules made under Section 19-6-403.

**19-6-415.5. State-owned underground tanks to participate in program.**

Any underground storage tank owned or leased by the state of Utah and subject to the financial assurance requirements established by division rule shall participate in the program.

**19-6-416. Restrictions on delivery of petroleum -- Civil penalty.**

(1) After July 1, 1991, a person may not deliver petroleum to, place petroleum in, or accept petroleum for placement in a petroleum storage tank that is not identified in compliance with Subsection 19-6-411(7).

(2) Any person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in an underground storage tank in violation of Subsection (1) is subject to a civil penalty of not more than \$500 for each occurrence.

(3) The executive secretary shall issue a notice of agency action assessing a civil penalty of not more than \$500 against any person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in violation of Subsection (1) in a petroleum storage tank or underground storage tank.

(4) A civil penalty may not be assessed under this section against any person who in good faith delivers or places petroleum in a petroleum storage tank or underground storage tank that is identified in compliance with Subsection 19-6-411(7) and rules made under that subsection, whether or not the tank is in actual compliance with the other requirements of Section 19-6-411.

**19-6-416.5. Restrictions on underground storage tank installation companies -- Civil penalty.**

(1) After July 1, 1994, no individual or underground installation company may install an underground storage tank without having a valid underground storage tank installation company permit.

(2) Any individual or underground storage tank installation company who installs an underground storage tank in violation of Subsection (1) is subject to a civil penalty of \$500 per underground storage tank.

(3) The executive secretary shall issue a notice of agency action assessing a civil penalty of \$500 against any underground storage tank installation company or person who installs an underground storage tank in violation of Subsection (1).

**19-6-417. Use of fund revenues to investigate certain releases from petroleum storage tank.**

If the executive secretary is notified of or otherwise becomes aware of a release or suspected release of petroleum, he may expend revenues from the fund to investigate the release or suspected release if he has reasonable cause to believe the release is from a tank that is covered by the fund.

**19-6-418. Recovery of costs by executive secretary.**

(1) The executive secretary may recover:

(a) from a responsible party the proportionate share of costs the party is responsible for as determined under Section 19-6-424.5;

(b) any amount required to be paid by the owner under this part which the owner has not paid; and

(c) costs of collecting the amounts in Subsections (1)(a) and (1)(b).

(2) The executive secretary may pursue an action or recover costs from any other person if that person caused or substantially contributed to the release.

(3) All costs recovered under this section shall be deposited in the Petroleum Storage Tank Cleanup Fund created in Section 19-6-405.7.

**19-6-419. Costs covered by the fund -- Costs paid by owner or operator -- Payments to third parties -- Apportionment of costs.**

(1) If all requirements of this part have been met and a release occurs from a tank that is covered by the fund, the costs per release shall be covered as provided under this section.

(2) The responsible party shall pay:

(a) the first \$10,000 of costs; and

(b) (i) all costs over \$1,000,000, if the release was from a tank:

(A) located at a facility engaged in petroleum production, refining, or marketing; or

(B) with an average monthly facility throughput of more than 10,000 gallons; and

(ii) all costs over \$500,000, if the release was from a tank:

(A) not located at a facility engaged in petroleum production, refining, or marketing; and

(B) with an average monthly facility throughput of 10,000 gallons or less.

(3) If money is available in the fund and the responsible party has paid costs of \$10,000, the executive secretary shall pay costs from the fund in an amount not to exceed:

(a) \$990,000 if the release was from a tank:

(i) located at a facility engaged in petroleum production, refining, or marketing; or

(ii) with an average monthly facility throughput of more than 10,000 gallons; and

(b) \$490,000 if the release was from a tank:

(i) not located at a facility engaged in petroleum production, refining, or marketing; and

(ii) with an average monthly facility throughput of 10,000 gallons or less.

(4) The total costs of tank releases regarding any responsible party that may be paid in any fiscal year by fund monies are:

(a) \$990,000 for a responsible party of one to 99 petroleum storage tanks; or

(b) \$1,990,000 for a responsible party of 100 or more petroleum storage tanks.

(5) (a) In authorizing payments for costs from the fund, the executive secretary shall apportion monies first to legal, adjusting, and actuarial expenses incurred by the state; expenses incurred in investigation, abatement action, and corrective action; and then to payment of judgments, awards, or settlements to third parties for bodily injury or property damage.

(b) The board shall make rules governing the apportionment of costs among third party claimants.

#### **19-6-420. Releases -- Abatement actions -- Corrective actions.**

(1) If the executive secretary determines that a release from a petroleum storage tank has occurred, he shall:

(a) identify and name as many of the responsible parties as reasonably possible; and

(b) determine which responsible parties, if any, are covered by the fund regarding the release in question.

(2) Regardless of whether the tank generating the release is covered by the fund, the executive secretary may:

(a) order the owner or operator to take abatement, investigative, or corrective action, including the submission of a corrective action plan; and

(b) if the owner or operator fails to take any of the abatement, investigative, or corrective action ordered by the executive secretary, the executive secretary may take any one or more of the following actions:

(i) subject to the conditions in this part, use monies from the fund, if the tank involved is covered by the fund, state cleanup appropriation, or the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7 to perform investigative, abatement, or corrective action;

(ii) commence an enforcement proceeding;

(iii) enter into agreements or issue orders as allowed by Section 19-6-424.5; or

(iv) recover costs from responsible parties equal to their proportionate share of liability as determined by Section 19-6-424.5.

(3) (a) Subject to the limitations established in Section 19-6-419, the executive secretary shall provide monies from the fund for abatement action for a release generated by a tank covered by the fund if:

(i) the owner or operator takes the abatement action ordered by the executive secretary; and

(ii) the executive secretary approves the abatement action.

(b) If a release presents the possibility of imminent and substantial danger to the public health or the environment, the owner or operator may take immediate abatement action and petition the executive secretary for reimbursement from the fund for the costs of the abatement action. If the owner or operator can demonstrate to the

satisfaction of the executive secretary that the abatement action was reasonable and timely in light of circumstances, the executive secretary shall reimburse the petitioner for costs associated with immediate abatement action, subject to the limitations established in Section 19-6-419.

(c) The owner or operator shall notify the executive secretary within 24 hours of the abatement action taken.

(4) (a) If the executive secretary determines corrective action is necessary, the executive secretary shall order the owner or operator to submit a corrective action plan to address the release.

(b) If the owner or operator submits a corrective action plan, the executive secretary shall review the corrective action plan and approve or disapprove the plan.

(c) In reviewing the corrective action plan, the executive secretary shall consider the following:

- (i) the threat to public health;
- (ii) the threat to the environment; and
- (iii) the cost-effectiveness of alternative corrective actions.

(5) If the executive secretary approves the corrective action plan or develops his own corrective action plan, he shall:

- (a) approve the estimated cost of implementing the corrective action plan;
- (b) order the owner or operator to implement the corrective action plan;

(c) (i) if the release is covered by the fund, determine the amount of fund monies to be allocated to an owner or operator to implement a corrective action plan; and

(ii) subject to the limitations established in Section 19-6-419, provide monies from the fund to the owner or operator to implement the corrective action plan.

(6) (a) The executive secretary may not distribute any monies from the fund for corrective action until the owner or operator obtains the executive secretary's approval of the corrective action plan.

(b) An owner or operator who begins corrective action without first obtaining approval from the executive secretary and who is covered by the fund may be reimbursed for the costs of the corrective action, subject to the limitations established in Section 19-6-419, if:

- (i) the owner or operator submits the corrective action plan to the executive secretary within seven days after beginning corrective action; and
- (ii) the executive secretary approves the corrective action plan.

(7) If the executive secretary disapproves the plan, he shall solicit a new corrective action plan from the owner or operator.

(8) If the executive secretary disapproves the second corrective action plan, or if the owner or operator fails to submit a second plan within a reasonable time, the executive secretary may:

- (a) develop his own corrective action plan; and
- (b) act as authorized under Subsections (2) and (5).

(9) (a) When notified that the corrective action plan has been implemented, the executive secretary shall inspect the location of the release to determine whether or not the corrective action has been properly performed and completed.

(b) If the executive secretary determines the corrective action has not been properly performed or completed, he may issue an order requiring the owner or operator to complete the corrective action within the time specified in the order.

#### **19-6-421. Third party payment restrictions and requirements.**

(1) If there are sufficient revenues in the fund, and subject to the provisions of Sections 19-6-419, 19-6-422, and 19-6-423, the executive secretary shall authorize payment from the fund to third parties regarding a release covered by the fund as provided in Subsection (2) if:

(a) (i) he is notified that a final judgment or award has been entered against the responsible party covered by the fund that determines liability for bodily injury or property damage to third parties caused by a release from the tank; or

(ii) approved by the state risk manager, the responsible party has agreed to pay an amount in settlement of a claim arising from the release; and

(b) the responsible party has failed to satisfy the judgment or award, or pay the amount agreed to.

(2) The executive secretary shall authorize payment to the third parties of the amount of the judgment, award, or amount agreed to subject to the limitations established in Section 19-6-419.

**19-6-422. Participation by state risk manager in suit, claim, or settlement.**

(1) If a suit is filed or a claim is made against a responsible party who is eligible for payments from the fund for bodily injury or property damage connected with a release of petroleum from a petroleum storage tank, the state risk manager and his legal counsel may participate with the responsible party and his legal counsel in:

- (a) the defense of any suit;
- (b) determination of legal strategy and any other decisions affecting the defense of any suit; and
- (c) any settlement negotiations.

(2) The state risk manager shall approve any settlement between the responsible party and a third party before payment of fund monies is made.

**19-6-423. Claim or suit against responsible parties -- Prerequisites for payment from fund to responsible parties or third parties -- Limitations of liability for third party claims.**

(1) In order to be eligible for payments from the fund, if a responsible party receives actual or constructive notice of an occurrence likely to give rise to a claim, that a suit has been filed, or a claim has been made against him for bodily injury or property damage connected with a release of petroleum from a petroleum storage tank, the responsible party shall:

- (a) inform the state risk manager immediately of the occurrence, suit, or claim;
- (b) allow the state risk manager and his legal counsel to participate with the responsible party and his legal counsel in:
  - (i) the defense of any suit;
  - (ii) determination of legal strategy and any other decisions affecting the defense of any suit; and
  - (iii) any settlement negotiations; and
- (c) conduct the defense of any suit or claim in good faith.

(2) The executive secretary may not authorize payment of fund monies for any judgment or award to third parties unless the state risk manager:

- (a) indicates that he was not prevented from participating in the defense of the suit; and
- (b) approves the settlement.

(3) In making payments to third parties from the fund pursuant to Section 19-6-421, or in funding a corrective action plan pursuant to Section 19-6-420, the executive secretary may not pay an award or judgment or fund a corrective action plan to the extent that it imposes any liability or makes any payment for:

(a) obligations of a responsible party under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) bodily injury to an employee of the responsible party arising from and in the course of his employment or to the spouse, child, parent, brother, sister, heirs, or personal representatives of that employee as a result of that bodily injury;

(c) bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) property damage to any property owned by, occupied by, rented to, loaned to, bailed to, or otherwise in the care, custody, or control of the owner or operator except to the extent necessary to complete a corrective action plan;

(e) bodily injury or property damage for which the responsible party is obligated to pay damages only by reason of the assumption of liability in a contract or agreement, other than a contract or agreement entered into to meet the financial responsibility requirements of Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C., Section 6991c, et seq., or this part, or regulations or rules made under either of them;

(f) bodily injury or property damage for which the responsible party is liable to a third party solely on account of personal injury to the spouse of that third party;

(g) bodily injury or property damage caused by a release from a petroleum storage tank covered by the fund or the cost of a corrective action plan, where the total amount previously paid by the executive secretary to compensate third parties or for funding a corrective action plan in respect to that same accidental release from the covered tank equals \$990,000; or

(h) bodily injury or property damage caused by a release from a petroleum storage tank covered by the fund or the cost of a corrective action plan when the total amount previously paid by the executive secretary to compensate third parties or for funding corrective action plans in respect to releases from tanks of any one responsible party during any fiscal year equals \$990,000 for a responsible party regarding one to 99 petroleum storage tanks or \$1,990,000 for a responsible party regarding 100 or more petroleum storage tanks.

**19-6-424. Claims not covered by fund.**

(1) The executive secretary may not authorize payments from the fund unless:

(a) the claim was based on a release occurring during a period for which that tank was covered by the fund;  
(b) the claim was made:

(i) during a period for which that tank was covered by the fund; or

(ii) (A) within one year after that fund-covered tank is closed; or

(B) within six months after the end of the period during which the tank was covered by the fund; and

(c) there are sufficient revenues in the fund.

(2) The executive secretary may not authorize payments from the fund for an underground storage tank installation company unless:

(a) the claim was based on a release occurring during the period prior to the issuance of a certificate of compliance;

(b) the claim was made within 12 months after the date the tank is issued a certificate of compliance for that tank; and

(c) there are sufficient revenues in the fund.

(3) The executive secretary may require the claimant to provide additional information as necessary to demonstrate coverage by the fund at the time of submittal of the claim.

(4) If the Legislature repeals or refuses to reauthorize the program for petroleum storage tanks established in this part, the executive secretary may authorize payments from the fund as provided in this part for claims made until the end of the time period established in Subsection (1) or (2) provided there are sufficient revenues in the fund.

**19-6-424.5. Apportionment of liability -- Liability agreements -- Legal remedies -- Amounts recovered.**

(1) After providing notice and opportunity for comment to responsible parties identified and named under Section 19-6-420, the executive secretary may:

(a) issue written orders determining responsible parties;

(b) issue written orders apportioning liability among responsible parties; and

(c) take action, including legal action or issuing written orders, to recover costs from responsible parties, including costs of any investigation, abatement, and corrective action performed under this part.

(2) (a) In any apportionment of liability, whether made by the executive secretary or made in any administrative proceeding or judicial action, the following standards apply:

(i) liability shall be apportioned among responsible parties in proportion to their respective contributions to the release; and

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of regulated substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.

(b) (i) The burden of proving proportionate contribution shall be borne by each responsible party.

(ii) If a responsible party does not prove his proportionate contribution, the court, the board, or the executive secretary shall apportion liability to the party based on available evidence and the standards of Subsection (2)(a).

(c) The court, the board, or the executive secretary may not impose joint and several liability.



(d) Each responsible party is strictly liable for his share of costs.

(3) The failure of the executive secretary to name all responsible parties is not a defense to an action under this section.

(4) The executive secretary may enter into an agreement with any responsible party regarding that party's proportionate share of liability or any action to be taken by that party.

(5) The executive secretary and a responsible party may not enter into an agreement under this part unless all responsible parties named and identified under Subsection 19-6-420(1)(a):

(a) have been notified in writing by either the executive secretary or the responsible party of the proposed agreement; and

(b) have been given an opportunity to comment on the proposed agreement prior to the parties' entering into the agreement.

(6) (a) Any party who incurs costs under this part in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in the district court.

(b) In resolving claims made under Subsection (6)(a), the court shall allocate costs using the standards in Subsection (2).

(7) (a) A party who has resolved his liability under this part is not liable for claims for contribution regarding matters addressed in the agreement or order.

(b) (i) An agreement or order determining liability under this part does not discharge any of the liability of responsible parties who are not parties to the agreement or order, unless the terms of the agreement or order expressly provide otherwise.

(ii) An agreement or order determining liability made under this subsection reduces the potential liability of other responsible parties by the amount of the agreement or order.

(8) (a) If the executive secretary obtains less than complete relief from a party who has resolved his liability under this section, the executive secretary may bring an action against any party who has not resolved his liability as determined in an order.

(b) In apportioning liability, the standards of Subsection (2) apply.

(c) A party who resolved his liability for some or all of the costs under this part may seek contribution from any person who is not a party to the agreement or order.

(9) (a) An agreement or order determining liability under this part may provide that the executive secretary will pay for costs of actions that the parties have agreed to perform, but which the executive secretary has agreed to finance, under the terms of the agreement or order.

(b) If the executive secretary makes payments from the fund or state cleanup appropriation, he may recover the amount paid using the authority of Section 19-6-420 and this section or any other applicable authority.

(c) Any amounts recovered under this section shall be deposited in the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7.

#### **19-6-425. Violation of part -- Civil penalty -- Suit in district court.**

(1) Except as provided in Section 19-6-407, any person who violates any requirement of this part or any order issued or rule made under the authority of this part is subject to a civil penalty of not more than \$10,000 per day for each day of violation.

(2) The executive secretary may enforce any requirement, rule, agreement, or order issued under this part by bringing a suit in the district court in the county where the underground storage tank or petroleum storage tank is located.

(3) The department shall deposit the penalties collected under this part in the Petroleum Storage Tank Restricted Account created under Section 19-6-405.5.

#### **19-6-426. Limitation of liability of state -- Liability of responsible parties -- Indemnification agreement involving responsible parties.**

(1) This part is not intended to create an insurance program.

(2) The fund established in this part shall only provide funds to finance costs for responsible parties who meet the requirements of this part when releases from petroleum storage tanks occur.

(3) The assets of the fund, if any, are the sole source of monies to pay claims against the fund.

(4) The state is not liable for:

(a) any amounts payable from the fund for which the fund does not have sufficient assets;

(b) any expenses or debts of the fund; or

(c) any claim arising from the creation, management, rate-setting, or any other activity pertaining to the fund.

(5) The responsible parties are liable for any costs associated with any release from the underground storage tank system.

(6) This part does not preclude a responsible party from enforcing or recovering under any agreement or contract for indemnification associated with a release from the tank or from pursuing any other legal remedies that may be available against any party.

(7) If any payment is made under this part, the fund shall be subrogated to all the responsible parties' rights of recovery against any person or organization and the responsible parties shall execute and deliver instruments and papers and do whatever else is necessary to secure the rights. The responsible parties shall do nothing after a release is discovered to prejudice the rights. In the event of recovery by the fund, any amount recovered shall first be used to reimburse the responsible parties for costs they are required to pay pursuant to Section 19-6-419.

(8) Parties who elect to participate in the fund do so subject to the conditions and limitations in this section and in this part.

**19-6-427. Liability of any person under other laws -- Additional state and governmental immunity -- Exceptions.**

(1) Except as provided in Subsection (2), nothing in this part affects or modifies in any way:

(a) the obligations or liability of any person under any other provision of this part or state or federal law, including common law, for damages, injury, or loss resulting from a release or substantial threat of a release of petroleum from an underground storage tank or a petroleum storage tank; or

(b) the liability of any person for costs incurred except as provided in this part.

(2) In addition to the governmental immunity granted in Title 63G, Chapter 7, Governmental Immunity Act of Utah, the state and its political subdivisions are not liable for actions performed under this part except as a result of intentional misconduct or gross negligence including reckless, willful, or wanton misconduct.

**19-6-428. Eligibility for participation in the fund.**

(1) Subject to the requirements of Section 19-6-410.5, all owners and operators of existing petroleum storage tanks that were covered by the fund on May 5, 1997, may elect to continue to participate in the program by meeting the requirements of this part, including paying the tank fees and environmental assurance fee as provided in Sections 19-6-410.5 and 19-6-411.

(2) Any new petroleum storage tanks that were installed after May 5, 1997, or tanks eligible under Section 19-6-415, may elect to participate in the program by complying with the requirements of this part.

(3) (a) All owners and operators of petroleum storage tanks who elect to not participate in the program, including by the use of an alternative financial assurance mechanism, shall, in order to subsequently participate in the program:

(i) perform a tank tightness test;

(ii) except as provided in Subsection (3)(b), perform a site check, including soil and, when applicable, groundwater samples, to demonstrate that no release of petroleum exists or that there has been adequate remediation of releases as required by board rules;

(iii) provide the required tests and samples to the executive secretary; and

(iv) comply with the requirements of this part.

(b) A site check under Subsection (3)(a)(ii) is not required if the executive secretary determines, with reasonable cause, that soil and groundwater samples are unnecessary to establish that no petroleum has been released.

- (4) The executive secretary shall review the tests and samples provided under Subsection (3)(a)(iii) to determine:
- (a) whether or not any release of the petroleum has occurred; or
  - (b) if the remediation is adequate.

**19-6-429. False information and claims.**

(1) Any person who presents or causes to be presented any oral or written statement, knowing the statement contains false information, in order to obtain a certificate of compliance is guilty of a class B misdemeanor.

(2) (a) Any person who presents or causes to be presented any claim for payment from the fund, knowing the claim contains materially false information or knowing the claim is not eligible for payment from the fund, is subject to the criminal penalties under Section 76-10-1801 regarding fraud.

(b) The level of criminal penalty shall be determined by the value involved, in the same manner as in Section 76-10-1801.